



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

November 25, 2015

Kiona West Heights Water Association
c/o Lawrence E. Martin, Attorney
Halverson Nothwest Law Group
405 E. Lincoln Avenue
Yakima, WA 98907

Re: Ground Water Permit No. G4-25715P

Dear Mr. Martin:

On September 21, 2015, the Department of Ecology (Ecology) received fees and an extension request for file No. **G4-25715P**. In response to your request, you are hereby **denied** an extension of time in which to put the water to full beneficial use.

Application No. G4-25715 was submitted to Ecology on January 30, 1978 and a permit issued on May 31, 1978, authorizing 2,000 gallons per minute (gpm) and 1,309 acre-feet per year (ac-ft/yr) for the irrigation of 285 acres of alfalfa and for community domestic supply. The following is a brief history of this permit in terms of extensions:

ACTION	DATE
Well location was changed administratively through an Extension Request #1.	1979
Beginning of Construction notice (BC) filed.	3-12-1981
Super Permit issued reflecting point of withdrawal correction.	1-21-1982
Extension #2 to drill another approved well & install storage tank. No diligence reported, only work planned.	1982
Extension #3 to reseed 50 acres. Wants to deepen Well #1. Serves 2 homes.	1983
Extension #4 to sell land. Did not deepen Well #1. Did not drill other wells.	1984
Extension #5 to add homes. Did not drill other wells. Planted another 5 acres.	1985
Extension #6 to continue development. Worked on other projects instead of this development. Did not deepen Well #1. Did not drill other wells. Rezoned to 1-acre tracts.	1986
Extension #7 to wait for economy to improve.	1987
Completion of Construction notice (CC) filed.	10-26-1988
Extension #8 to add homes. Well #2 drilled. Six parcels "sold."	1991
Extension #9 to sell more lots. Ten parcels "sold." Sold lots are not built on.	1992
Another CC filed.	10-18-1993
Proof of Appropriation notice (PA) filed for 275 gpm, 180 ac-ft/yr, 1 well, 34 acres and 37 lots.	10-18-1993
Ecology reverts permit to PA status.	3-28-2001
Extension #10. No information given.	2001
Extension #11 to sell 3 more lots.	2006
Extension #12 to add more homes. Currently has 34 connections and several provisions added to Permit.	2010



A Permit holder is required under RCW 90.03.320 to pursue the completion of a project with due diligence. The Permit development schedule was originally set to apply the water to full beneficial use by October 1, 1981. That is 34 years ago.

As evidenced by the exceptionally long history of this file, there has been spotty and sporadic development of this project, and it appears Ecology has previously been generous in granting numerous extensions. Regarding the extension request before Ecology now, Ecology expressed concern to the applicant's legal counsel over the lack of due diligence demonstrated in their extension request letter. Two subsequent phone calls between Ecology and the applicant's legal counsel ensued, and a supplemental letter was submitted to Ecology. While current status and future planning were discussed in some detail in the letter, due diligence towards developing this permit was not demonstrated. Ecology notes that in 2010, during the previous extension request evaluation, Ecology relayed serious concerns over the lack of due diligence shown in pursuing this project to the applicant.

The long delay in perfecting this Permit is contrary to the public interest. The State Water Code does not allow the reservation of water for use at an unspecified time in the future. As such, and due to the ongoing lack of development, Ecology cannot conclude that the development of the permitted project is being pursued in good faith and with due diligence.

There have been several Pollution Control Hearing Board (PCHB) cases in which rulings were made on criteria for granting extensions of time to develop beneficial use under a Permit.

The following are some PCHB examples demonstrating why Ecology is denying this extension request:

- A permittee may not maintain a Permit indefinitely, because to do so makes the water unavailable to others who might wish to put it to a beneficial use. The Permit is by nature an intermediate stage in the creation of the water right and must be diligently pursued to be maintained. Oroville-Tonasket Irrigation District v. Ecology, PCHB Nos. 91-170 & 93-134 (1996).
- Time requirements for completion of appropriations are essential in the public interest. When allocating water, Ecology deducts the amount represented by outstanding Permits even though the water has not yet been put to full beneficial use. Those granted Permits that have not completed their projects have the potential to block subsequent applicants from obtaining water. Case v. Ecology, PCHB No. 89-114 (1990).
- Given that fourteen years have passed since the appellant received such permit, appellant had not developed the permit with due diligence. Any further extension would be unreasonable since the appellant estimated that he needed another six years to develop the permit. Peterson v. Ecology, PCHB No. 94-265 (1995).
- Increased scrutiny must be exercised by Ecology because this permit is "long-standing," and based on the file history, where there have been fits and starts with sporadic efforts to pursue the project and there has been a significant amount of time since the Permit was issued and there are significant times when there was no substantial activity. Concerned Neighbors of Lake Samish v. Ecology, PCHB Nos. 11-26, 11-127, and 11-128 (2012).

If you wish to keep active the portion of the project that is complete, approximately 34 serviced lots with minimal lawn/garden/landscaping irrigation of up to approximately 15 acres of irrigation, a **Proof of Appropriation** notice must be submitted to Ecology within sixty (60) days of this letter to avoid

cancellation of the Permit. According to RCW 90.03.260(4) and (5), if a water system serving 15 or more existing residential service connections has a water right for community or multiple domestic supply, and the number of connections has been authorized by the Department of Health, the water right is for municipal water supply purposes and any population or connection limitations that may appear in water right documents are not limiting. Rather, the maximum instantaneous quantity (Qi) and annual quantity (Qa) are the controlling numbers. Therefore, the quantity of water required by the project that has currently been applied to beneficial use must be identified.

Ecology must have verification of your water use before issuing a *Certificate of Water Right*. Your next step would be to hire a certified water right examiner (CWRE) to perform a field inspection of your water use and prepare a *Proof Report of Examination and Recommendation Summary*. You can find a list of certified water right examiners at <http://www.ecy.wa.gov/programs/wr/rights/cwrep.html>, or you may call the CWRE Coordinator at (360) 407-6450 and request that a copy of the list be mailed to you. Ecology will make decisions on certificating your water right after reviewing the report and the recommendation of the CWRE.

Additionally, in support of the extension request the applicant expressed interest in drilling an additional well or wells under this Permit. Ecology notes that the completion of construction phase has passed and extension of the Permit, now in the Proof of Appropriation phase, is no longer appropriate for the drilling of more wells. Rather, there are two options available for the proposed new wells:

- File a water right change application consistent with RCW 90.44.100, which would include filing the application with the Benton County Water Conservancy Board. The Board will evaluate the proposal and make a decision. Ecology then reviews the Board's decision and can approve, deny, or modify the decision.
- Under some limitations, a showing of compliance with RCW 90.44.100(3) can be demonstrated without the need for change application submittal. Please refer to Ecology's Policy 1260 "Policy to Replace an Existing Well or to Add an Additional Well(s)" or contact Ecology's Central Regional Office's Water Resources Program for more information at (509) 575-2490.

YOUR RIGHT TO APPEAL

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503 Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

If you have any questions or concerns about this information, please call the Help Desk at (509) 575-2597.

Sincerely,



Thomas Perkow, Acting Section Manager
Water Resources Program
Central Regional Office

TP:CLG:SS/151118
WR ID# 2283497

Enclosures: Your Right to be Heard
Proof of Appropriation

By certified mail: 7010 0290 0000 7126 8863

cc: Kiona West Heights Water Association